

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH: RAIPUR**

श्री रवीश सूद, न्यायिक सदस्य, एवं
श्री अरुण खोडपिया, लेखा सदस्य के समक्ष
**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.77/RPR/2023
निर्धारण वर्ष /Assessment Year: 2012-13

Hira Infra-Tek Limited
Hira Arcade Near New Bus Stand,
Pandri, Raipur

v. ACIT
Circle – 1(1)
Raipur

[PAN: AAECR 1082 J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri R. B. Doshi, C.A.
: Shri Satya Prakash Sharma,
Sr. D.R.

सुनवाई की तारीख/Date of Hearing : 17.08.2023
घोषणा की तारीख /Date of Pronouncement : 15.09.2023

आदेश / ORDER

PER ARUN KHODPIA, ACCOUNTANT MEMBER:

This captioned appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals) for Assessment Year 2012-13 dated 22.02.2023, arose from the order of Learned Assistant Commissioner of Income-tax, Circle – 3(1), Raipur under Section 143(3) of the Income-tax Act, 1961 dated 27.03.2015.

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2. The assessee has raised the following grounds of appeal:
 1. *Learned CIT(A) erred in confirming disallowance of Rs.53,63,056/- made by AO invoking Section 14A. The disallowance made by AO and confirmed by Ld. CIT(A) is arbitrary, baseless, and not justified.*
 2. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal."*

3. The brief facts of the case are that, the assessee is a company incorporated with the intend to commence and carry on the business of investment in real estate properties. The return of income for A.Y. 2012-13 was filed electronically by the assessee on 30.09.2012 declaring a loss income of Rs.58,40,847/-. The Learned AO observed that the company has made substantial investments during the financial year 2011-12 amounting to Rs. 12,73,46,763/- . On this aspect, it is also observed by the Learned AO that the company's business is already burdened with interest bearing loans and thereby reducing the profitability of the business, the assessee was asked to explain why corresponding expenditure should not be disallowed in view of the provisions of Section 14A r.w.r 8D of the Income-tax Rules since these incomes are exempt from tax. Assessee furnished certain details but not to the satisfaction of the Learned AO, therefore, it was observed that the assessee has failed to furnish necessary details/documents to substantiate that the

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investment were made out of own funds and not from interest bearing funds. With such observations, Learned AO proceeded to make addition under Section 14A r.w.s 8D of the I.T. Rules for an amount of Rs.53,63,056/- thereby determining the assessed income of the assessee at a loss of Rs.4,77,790/-.

4. Aggrieved by the order of AO, assessee preferred the appeal before the Learned CIT(A). However, with no success, the appeal of the assessee was dismissed by the Learned CIT(A). Dissatisfied with the order of Learned CIT(A), assessee preferred an appeal before the ITAT, which is taken up for hearing today.

5. At the start of hearing, Learned AR on behalf of the assessee submitted that the Learned AO has observed that the assessee had made investment in Equity Shares to the extent of Rs.12,73,46,763/-, however, fresh investment during the year were only to the tune of Rs.5,76,00,000/-. To substantiate this fact, Learned AR drew our attention to page - 20 of the assessee's paper book showing audited finances of the assessee company, wherein under the head Non-current Investments in Note-7 of the audited notes to financial statement, there was an increase in unquoted fully paid-up Equity Shares of Demeurer Developers Pvt. Ltd for Rs.

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Rs.5,76,00,000/- and that was the only increase during the relevant year. With regard to contention that assessee had generated interest free funds by way of receipt of share application money of Rs.9.54 crores received during the year. Learned AR drew our attention to the Bank book of the company furnished at pages 23-26 of the paper book, showing receipt from various investors before making the investment in M/s Demeurer Developers Pvt. Ltd. Therefore the investment made by the assessee during year were out of the non-interest bearing funds, therefor the disallowance u/s 14A r.w.r. 8D is uncalled for. This contention was further substantiated by showing the notes to financial statement placed at page 19 of the paper book, wherein under the head Share Capital at note no.3, it is apparent that the assessee has received an amount of Rs.9,54,50,000/- by issuing of 95,45,000, 10% Cumulative Redeemable Preference Shares of Rs.10/- each. On the aforesaid contentions, the assessee placed its reliance on two judgments as under:

- (i) South Indian Bank Ltd. vs. CIT (2021) 438 ITR 0001 (SC) dated 09.09.2021, wherein Hon'ble Supreme Court has held, extracted as under:

20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the

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*assesseees in bonds/shares using interest free funds, under Section 14A of the Act. In other words, **if investments in securities is made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax-free securities then in such cases, disallowance under Section 14A cannot be made.***

(ii) HDFC Bank vs. DCIT (2016) 383 ITR 529 (Bom.), wherein Hon'ble Bombay High Court has held, extracted as under:

5. *We have considered rival contentions and deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by Id. AR and DR during the course of hearing before us. From the record we found that at the time of filing the return of income for A.Y.2006-07, the decision of Tribunal in assessee's own case for A.Y.2001-02 to 2005-06, ITA No.4529/Mum/2005, was not available and hence on a conservative basis, suo moto disallowance of proportionate interest was made u/s.14A by the assessee in the computation of income. **The ITAT vide order dated 29-6-2011, deleted the disallowance of interest u/s.14A on the ground that where interest free funds are more than the investment made in tax-free securities, it shall be presumed that such investments is made from interest free funds. This ITAT decision has been subsequently affirmed by the Hon'ble Bombay***

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High Curt in assessee's own case reported in 366 ITR 505. However, the department has not filed an appeal before the Hon'ble Supreme Court against the said High Court's order.

6. The next contention pertaining to restricting the addition to the extent of exempt income, it was the submission of Learned AR that the assessee has exempt income of Rs.19,76,630/- only during the year which is visible from copy of the audited statement of Profit and Loss furnished before us at page – 17 of the paper book, wherein under the head dividend income shown for Rs.19,76,630/- . Learned AR further drew out attention at page 10 of the paper book, showing computation of income, wherein such dividend income exempt under Section 10(34) of the Act is duly disclosed by the assessee. It was the alternative submission of the Learned AR that in any case the disallowance could not exceed exempt income, therefore the disallowance should be restricted to that extent. On these contentions, reliance was placed on the following judgments as under:

(i) PCIT vs. Envestor Ventures Ltd. (2021) 431 ITR 221 (Mad) dated 18.01.2021, wherein Hon'ble Madras High Court has held, extracted as under:

"Substantial questions of law raised for consideration were answered against Revenue in the case of Marg Lad vs

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Commissioner of Income Tax. The operative portion of the judgment reads as follows :

"13. Provisions of Section 14A themselves are very clear and without recording satisfaction by the Assessing Authority that the expenditure incurred to earn exempted income, as computed by the Assessee is not acceptable for the specified reasons, the Assessing Authority cannot even resort to computation of such disallowance under rule 8D of Assessing Authority that the expenditure incurred to earn exempted income, as computed by the Assessee is not acceptable for the specified reasons, the Assessing Authority cannot even resort to computation of such disallowance under rule 8D of the Rules Despite this being the position of law crystal clear and there being no other contrary view from any other High Court, one fails to understand how the Tribunal in the impugned order could still take a view contrary to this legal position and uphold the disallowance under Rule 8D read with section 14A. much beyond the quantum of exempted income of dividend earned by the Assessee in this year. The misconception of the Assessing Authority as well as Tribunal appear to have arisen because they have read Rule 8D providing for computation method of disallowance in isolation, as if it were an island provision or stand alone charging provision and they assumed that the disallowance as computed under Rule 8D is to be taxed as a notional income of the Assessee. This is absolutely impermissible in law. The reach of computation provision, namely Rule 8D cannot be read beyond the parent provision of Section 14A itself which itself is not a charging provision, but a restriction on allowance of expenditure incurred to earn exempted income. The Assessing Authority has to mandatorily record his satisfaction with regard to the proportionate disallowance of expenditure under section 144 as made by the Assessee that it is not satisfactory for such cogent reasons as specified and therefore, the same is liable to be rejected and therefore, the computation method under Rule 8D can be invoked as a

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legislative way out to compute the quantum of disallowance.

*15. Expenditure incurred to earn any income has to be always below the extent of income itself and bear a reasonable proportion thereto, as the commercial prudence does not permit any one to spend more and earn less. The investment in shares of which dividend is earned and dividend being exempted income, the expenditure incurred for earning such dividend in the form of interest on the borrowed funds, which are employed to buy such shares can obviously be not more than the dividend itself and even if the interest paid on such borrowed funds is more than the actual dividend earned during the year in question, the disallowance of interest cannot go beyond the amount of dividend itself. As such, interest paid on borrowed funds by the Assessee does not constitute income of Assessee for that year Section 14A has been introduced not to allow expenditure incurred to earn such exempted income in the form of dividend as an allowable expenditure against the exempted income of the Assessee and therefore, obviously **the disallowance too cannot exceed the extent of dividend itself.***

19. average disallowance as computed under Rule 8D could be disallowed only if Assessee had actually earned Dividend income in excess of such amount of disallowance.

Thus, by following the above decision, the present Tax Case Appeal is dismissed."

(ii) PCIT vs. State Bank of Patiala (2017) 393 ITR 476 (P&H) dated 27.02.2017, wherein Hon'ble Punjab and Haryana High Court has held, extracted as under:

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*"After hearing learned counsel for the parties, High Court notice that the issue on merits has been decided in favour of the assessee in State Bank of Patiala's case(supra). **The amount of disallowance under Section 14A was restricted to the amount of exempt income only and not at a higher figure.** Once that was so, High Court do not consider it appropriate to discuss the scope of Section 263 of the Act as the same has been rendered academic in view of the issue being answered in favour of the assessee on merits. Thus, no substantial question of law arises Consequently, the appeal stands dismissed."*

7. With the aforesaid submissions, Learned AR of the assessee submitted that since, assessee had sufficient interest free funds to invest and interest bearing or borrowed funds were not used by the assessee in making of such investments, therefore, no disallowance under Rule 8D should have been made by Learned AO and to be confirmed by Learned CIT(A), therefore, it was prayer that the disallowance made by AO was arbitrary, baseless and not justified. Therefore, the decision of Learned CIT(A) confirming such addition is liable to be set aside.

8. Contrary to the submission of the Learned AR, Learned DR vehemently supported the order of Learned Revenue authorities and requested to sustain the same.

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9. We have heard the rival contention, perused the material available on record and case laws placed before us. Under the factual matrix of the present case, it is clearly emanating that the assessee had made investment of Rs.5,76,00,000/- during the relevant assessment year, the said investment made was funded from the share application money of Rs.9,54,50,000/- received by way of issuing of Preference Share by the assessee was invested under the fresh investment during the year and the fact was duly substantiate by the Learned AR showing the audited financials of the assessee. The fact that total investment of the assessee was 12,73,46,763/- was also correctly observed by the Ld AO, whereas the free funds available with the assessee were only of Rs. 9,70,17,891/- (share capital + Reserves and Surplus), thus, the contention of the assessee that the total investments made by the assessee was out of the interest free funds only could not found to be substantiated, where applicability of section 14A is qua total investment and not restricted up to fresh investment only. However, since the assessee has an exempt income of only Rs.19,76,630/- during the relevant year and under similar facts and circumstances, we have taken a view, which we have followed in several other cases also, the addition under Section 14A r.w.s 8D should be restricted to the amount of exempt income of the

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assessee only, on this aspect, which is covered by the order of ITAT, Raipur in the case of M/s. Avinash Developers Pvt. Ltd. vs. DCIT/ACIT (ITA No.156/RPR/2022) dated 16.08.2023, wherein the observations of the Tribunal are as under:

"7. We have heard the rival contentions and perused the material available on record as well as judicial pronouncements in support of the contentions as relied upon by the Ld. AR placed before us. With respect to the amendment in Section 14A of the Act, since the issue has already been discussed and provision was interpreted by the Hon'ble High Court of Delhi and decided that effective change in provision could not be presumed to have retrospective effect, therefore, same will be applicable prospectively w.e.f. 01.04.2022 only. Thus, we in our considered view, in the present case before us which pertains to A.Y.2013-14, are of the opinion that change in provision of Section 14A will have no retrospective binding effect.

8. As regards the contention of the Ld. AR that now when the assessee company had not received any exempt income during the year under consideration, therefore, no disallowance u/s.14A of the Act was called for in its hand, we find substance in the same, since the aforesaid contention of the Ld. AR is duly supported by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxmann 2 (SC) and in the case of Pr. CIT Vs. Oil Industries Dev. Board, 104 CCH 156 (SC). However, on perusal of the computation of the total income of the assessee company (Page 14 of APB), it is apparent that the assessee company had earned exempt income on account of share of profit from partnership firm for an amount of Rs.3,82,401/-. We, thus, in terms of our aforesaid observations, are of the considered view that the addition should be restricted to the extent of exempt income i.e. Rs.3,82,401/-. The Hon'ble Delhi High Court in the judgment Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del) has held that if there is no exempt income, there cannot be any disallowance u/s 14A. Similar view has been taken by the Hon'ble Delhi High Court in CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-DelHC. The net effect of these decisions is that the disallowance u/s 14A gets restricted to the extent of exempt income, even if the provisions of the section

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are attracted. In view of the above precedents, which are squarely applicable to the facts of the instant case, we limit the disallowance to the extent of exempt income. Our view is further fortified by the order of Hon'ble Supreme Court of India, in the case of Principal Commissioner of Income Tax, Patiala vs. State Bank of Patiala reported in [2018] 99 taxmann.com 286 (SC), that:

Section 14A, read with section 263, of the Income-tax Act, 1961 – Expenditure incurred in relation to income not includible in total income (Computation of) – Assessment year 2010-11 – In course of assessment, Assessing Officer made addition on account of apportionment of expenses against exempted income under section 14A – Commissioner passed a revisional order directing Assessing Officer to enhance amount of addition under section 14A – Tribunal set aside revisional order as well as consequent assessment order passed by Assessing Officer enhancing addition made under section 14A – High Court upheld order of Tribunal holding that amount of disallowance under section 14A could be restricted to amount of exempt income only and not a higher figure – Whether on facts, SLP filed against decision of High Court was to be dismissed – Held, yes [Para 1][In favour of assessee]

9. Respectfully following the above judicial pronouncements, we hold that the addition u/s 14A should be restricted to the extent of exempt income i.e., Rs.3,82,401/-, accordingly we set aside the order of Ld CIT(A) and restore the issue back to file of direct the Ld AO for the limited purpose to verify the details of exempt income and restrict the addition as per our observations in this order. In the result, appeal of the assessee is partly allowed for statical purposes, in terms of our aforesaid observations.

10. Under the facts and circumstances of the present case, respectfully following the ratio of law laid down by the Hon'ble Madras High Court in the case of PCIT vs. Envestor Ventures Ltd. (supra) and Hon'ble Punjab and Haryana High Court in the case of

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PCIT vs. State Bank of Patiala (supra). Further following our view in the case of Avinash Developers (supra) based on various judgments referred to therein (supra), We are of the considered opinion that the disallowance should be restricted to the amount of exempt income earned by the assessee, however, for verification of exempt income, the matter needs to be restored back to the file of AO with the directions that restrict the disallowance u/s 14A r.w.r. 8D to the amount of exempt income of the assessee and adjudicate the issue afresh after such verification in accordance with law. Needless to say, that the assessee may be provided with reasonable opportunity of being heard. Consequently, order of Ld CIT(A) is set aside, and the issue is restored back to the file of Ld AO, as per our observations.

11. In the result, assessee is partly allowed for statistical purposes in terms of observations hereinabove.

Order pronounced on the 15th day of September 2023, in Raipur.

Sd/-
(रवीश सूद)
(RAVISH SOOD)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(अरुण खोडपिया)
(ARUN KHODPIA)
लेखा सदस्य/ACCOUNTANT MEMBER

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रायपुर/Raipur,

दिनांक/Dated: 15th September, 2023.

Priti Yadav, Sr.PS (on Tour)

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Raipur (C.G)
4. The Pr.CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर /
The DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाईल/Guard File

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT,
Raipur